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Citizenship and Immigration Services

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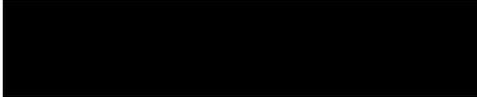
File:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office *for*

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a "Christian Youth Evangelist." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition.

On appeal, the petitioner completed the Form I-290B, and submitted a letter stating that the beneficiary "has been compensated for his work through donations and church offerings designated for his benefit to be used for his financial support."

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The sole issue raised by the director to be addressed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the

United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from April 30, 1999 until April 30, 2001. The petitioner indicated that the beneficiary entered the United States on September 14, 1992, and was undocumented. Part 4 of the Form I-360, Petition for Amerasian, Widow or Special Immigrant, submitted by the petitioner, indicates that the beneficiary has not worked in the United States without permission.

The two-year period during which the beneficiary must have been engaged continuously in a religious vocation or occupation occurs during the timeframe in which the beneficiary was in California. In a letter dated April 18, 2001, the petitioner stated that the beneficiary became a member of its religious organization in 1992, and in 1993 was named the Vice President of the church youth group, and shortly afterward became the president of the youth group.

The petitioner's letters, letters from organizations and sister churches, and other supporting documentation, indicate that the beneficiary: has organized and been involved in youth ministry programs to visit prisons, detention centers, rehabilitation homes for drug and alcohol abusers and abused children; has organized walk-a-thons for "Christ Crusades" in high crime neighborhoods; has been invited to preach at congregations of other churches sponsoring youth programs; has been invited to minister to gang members, drug addicts and other youth at tent revivals; has participated in radio broadcasts discussing Christian themes, including freedom from drug and alcohol addiction; is involved in writing, editing and publication of a Spanish-language Christian magazine; coordinates the petitioning church's participation in large evangelical events; organizes, plans and conducts bible studies, retreat activities, and fellowship with other Christian youth groups.

In response to the director's request for additional information, the petitioner submitted a letter dated September 7, 2002, providing a detailed breakdown of the beneficiary's activities for the petitioning church, which indicates he spends approximately 56 hours per week in performance of church-related activities as a Christian Youth Evangelist. The petitioner discusses the beneficiary's religious experience, on-the-job

training, and the many ongoing Christian training seminars, conferences and special events that have prepared him for performance of his duties.

The director's decision states that the petitioner indicated the beneficiary works as a "volunteer religious worker." The director states that in order to qualify for special immigrant classification, the job offer must show that the beneficiary will be employed in the conventional sense of full-time salaried employment and will not be dependent on supplemental employment, and that the two years continuous experience in the same position means the prior experience must have been full-time, salaried as well. The director concludes that, "the submitted evidence is insufficient to establish that the beneficiary has been performing full-time work or compensated as a religious worker for the two-year period immediately preceding the filing date of the petition."

As noted above, the petitioner did submit evidence to indicate that the beneficiary has worked approximately 56 hours per week, which would constitute a full-time schedule.

Regarding the issue of compensation, the petitioner's letter of September 7, 2002, does state that the beneficiary "is a volunteer religious worker." The letter continues, however, to note that the beneficiary's "traveling expenses are covered by offerings and donations that are provided by the churches and homes that he visits." The petitioner states that families and church members "provide an offering in [the beneficiary's] name to help defray his traveling and living expenses," which is "deposited in the church account and from it [the beneficiary's] donation is given. On average, [the beneficiary] has received monthly donations between six and eight hundred dollars. His donations are given in cash because he has no California I.D. to cash a check."

On appeal, the petitioner takes issue with the director's determination, and states:

A careful reread of my response letter and the record clearly makes no mention of volunteer work by [the beneficiary.] The fact is I stated and have stated throughout the record that [the beneficiary] has been compensated for his work through donations and church offerings designated for his benefit to be used for his financial support. Of course, he has not been a

full-time church salaried employee. He cann't [sic] because he is not legally authorized to work in the US. However, for all intense [sic] and purposes he is our church religious worker who is not compensated for his services in the traditional conventional fashion... Our Church is now offering [the beneficiary] a full-time salaried Christian Youth Evangelist position...

While the petitioner has, in fact, used the term "volunteer religious worker," this appears, in part, to be related to the issue of the beneficiary's lack of authorization to work legally in the United States. The director did not discuss the issue of the beneficiary receiving compensation of \$600-800 a month during the requisite two-year period from donations made into the petitioner's bank account. On appeal, however, the petitioner has not submitted documentation to verify deposits into a bank account of monies earmarked for the beneficiary, nor has it submitted verifiable evidence of payments made to the beneficiary. Although the petitioner affirms that the beneficiary lacks a California identification card that would enable him to cash checks, a log of the church's deposits, receipts from the church to the beneficiary detailing payments, and other objective documentation is lacking in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate

that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1964).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals (BIA) determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In this case, the record is silent regarding whether the beneficiary has performed or received wages from any secular employment. As discussed earlier, the record also lacks evidence that the petitioner compensated the beneficiary during the two-year period. Based on the discussion above, the petitioner has not overcome the determination of the director that the beneficiary had not been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition. Therefore, the petition must be denied for this reason.

Beyond the decision of the director, the petitioner has not established its ability to pay the beneficiary's proffered wage of \$250 per week, or \$13,000 per year.

8 C.F.R. § 204.5(g) (2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The initial filing contained no evidence of the petitioner's ability to pay the beneficiary the proffered wage. In response to the director's request for additional evidence, the petitioner submitted copies of Wells Fargo Bank, Business Checking Statements for July 2002 and August 2002, showing balances of \$2,154.97 and \$2,057.77. It is noted that the bank statements are in the name of "Templo Evangelico Maranatha," but list an address that is different than that on the church's letterhead, and different again from the address listed on the Internal Revenue Service (IRS) letter of recognition granting federal tax-exempt status. The petitioner also submitted a listing of 52 persons who are church members.

The petitioner has not submitted annual reports, federal tax returns, or audited financial statements, for the relevant timeframe, that would illustrate the assets and liabilities of the church and permit a conclusive determination on its ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g) (2).

In addition, any future petition should clarify the address of the religious organization. The IRS letter of recognition dated February 9, 1994, granting tax-exempt status to Templo Evangelico Maranatha, lists the organization's address as [REDACTED]. That particular address is also listed as the residence of Pastor Elias, of Templo Evangelico Maranatha, in a letter dated April 18, 2001. The Church's letterhead lists its address as [REDACTED].

[REDACTED] The bank statements, meanwhile, list the church's address as [REDACTED]

As the appeal will be dismissed on the ground previously discussed, the additional issues need not be examined further.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.